



February 27, 2009

Senator Jonathan A. Harris, Co-Chair  
Representative Elizabeth B. Ritter, Co-Chair  
and Members of the Public Health Committee  
of the Connecticut General Assembly  
Legislative Office Building  
Room 3000  
Hartford, CT 06106-1591

Re: Proposed Bill No. 5608 (LCO No. 1920),  
*An Act Concerning the Issuance of Liquor Permits to Casinos that Permit  
Smoking in the Casino*

Dear Senator Harris, Representative Ritter and Members of the Public Health  
Committee:

On behalf of the Mohegan Tribe of Indians of Connecticut, I am writing to address Proposed Bill No. 5608 and to supplement the testimony of Charles F. Bunnell, Chief of Staff of the Mohegan Tribe. Mr. Bunnell is providing the Committee with an update on the measures in effect at Mohegan Sun to reduce, remove, and monitor secondhand smoke, and he is acknowledging the efforts of the Governor, the Division of Special Revenue and the Southeastern Connecticut legislative delegation in working with the Mohegan Tribe on this important issue. As Attorney General of the Mohegan Tribe, I am writing to explain the legal reasons for the Mohegan Tribe's opposition to this bill and any such state legislation that would purport to interfere with the Mohegan Tribe's sovereign rights to self-governance, self-determination and economic development or that would violate the gaming Compact between the Tribe and the State of Connecticut.

The Mohegan Tribe opposes the legislation inasmuch as it imposes new conditions on the issuance of a liquor permit.<sup>1</sup> The conditions in the proposed bill are particularly offensive in that they single out only tribal casinos in violation of equal protection rights. The conditions also impose health related conditions that are not the proper subject of liquor regulation in Connecticut or relevant to the sale or distribution of alcoholic beverages in violation of the Compact. Imposing such conditions put at risk the revenue streams to the State from tribal casinos.

A brief review of the state's limited jurisdiction over the Mohegan Reservation under federal and state law and the Compact is necessary to understand why conditions on casino liquor permits are inappropriate.

<sup>1</sup> The Mohegan Tribe has met the conditions for issuance of a liquor permit contemplated in this proposed bill as a result of our government-to-government agreement with the Governor and the resulting standards of operation and management for Mohegan Sun adopted by the Mohegan Tribal Gaming Commission.

THE MOHEGAN TRIBE



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The Mohegan Nation Land Claims Settlement Act of 1994 (25 U.S.C. §1775, et seq.) established concurrent criminal jurisdiction of the Mohegan Tribe and the State of Connecticut on the Mohegan Tribe's Reservation and over the Mohegan people, but the Mohegan Tribe retained exclusive civil jurisdiction. The Connecticut Supreme Court recognized this principle in *Kizis v. Morse Diesel International, et als.*, 260 Conn. 46, 57-58 (2002) stating that "the legislative history of the Mohegan Nation of Connecticut Land Claims Settlement Act discloses a Congressional intent that '[t]he Mohegan Indian Nation will retain exclusive civil jurisdiction within the boundaries of its reservation....' H. Rep. 103-676, 103d Cong., 2d Sess. 9 (1994). Accordingly, in order for Connecticut to assume civil jurisdiction, the state must first obtain the consent of the affected tribe. See 25 U.S.C. §§ 1322, 1326 (1994)." Thus, except to the extent specifically provided under federal law or tribal law or by agreement of the Mohegan Tribe, the civil laws of the State of Connecticut are not applicable to the Mohegan Tribe.

The Tribal-State Compact between the State of Connecticut and the Mohegan Tribe executed in 1994 establishes the agreement of the Mohegan Tribe to the application of certain very limited civil laws to the Mohegan Tribe and Mohegan Reservation. Section 14(b) of the Compact provides: "Service of alcoholic beverages within any gaming facility shall be subject to the laws and regulations of the State applicable to sale or distribution of alcoholic beverages." [Emphasis added] This limiting language narrows the scope of the State's regulatory authority over liquor service on the Mohegan Reservation. The State regulation must be germane to sale or distribution. It is certainly not an open invitation to impose, unilaterally, any other type of regulation, including secondhand smoke regulation. Proposed Bill 5608 is health regulation, and there has been no suggestion that secondhand smoke has anything to do with the sale of alcohol (for example, to minors).

Further, Section 14(b) of the Compact further provides that the Mohegan Tribe "shall be entitled" to a permit for the sale of liquor for its gaming facilities. In his opinion addressed to this Committee last year in connection with S.B. No. 419 (2008 Session), Connecticut Attorney General Richard Blumenthal stated that Section 14(b) of the Mohegan and Mashantucket compacts "expressly condition such permits on the Tribes' compliance with 'laws and regulations of the State applicable to sale or distribution of alcoholic beverages.'" (Attorney General's Opinion dated March 13, 2008, p. 6) That statement is inaccurate since the "entitled to" provision and the "subject to the laws" provision are in separate sentences, not conditioned on each other. In fact, the "entitled to" sentence contains two different provisos regarding the pricing and accounting of alcohol sold or deemed sold to gaming patrons for purposes of calculating state sales tax on alcohol sales. It may be concluded that the parties did contemplate the

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conditioning of the liquor permit with the inclusion of these provisos and to the exclusion of all other types of conditions then or thereafter.<sup>2</sup>

Once again, we ask the General Assembly to respect the Mohegan Tribe's rights to self-governance and sovereignty, respect the terms of the Compact and refrain from trying to impose a smoking ban as unilateral health regulation or as a condition to any casino permit. The Mohegan Tribe remains committed, however, to enforcing the standards agreed to between the Mohegan Tribal Council and the Governor and adopted by the Mohegan Tribal Gaming Commission as we continue to expand smoke-free options. We also welcome the ongoing dialogue with the State, including the sponsors of this bill from our region of the Connecticut, who recognized the meaningful measures adopted by the Mohegan Tribe concerning this issue.

Very truly yours,



Helga M. Woods  
Attorney General  
The Mohegan Tribe of Indians of Connecticut

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<sup>2</sup> It should be noted that Section 14(b) of the Compact refers specifically to a hotel or café liquor permit or "equivalent permits as may from time to time be available" as the types of permits to which the tribal gaming operation is "entitled." Clearly, the casino permit established in 2000, after the Compact, is an equivalent permit and now a permit type to which the Mohegan Tribe is entitled.